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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of :)
)
ICO SERVICES LIMITED) RM No. 9328
Petition for Expedited Rule Making To)
Establish Eligibility Requirements for the)
2 GHz Mobile Satellite Service)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

REPLY OF CELSAT AMERICA, INC.

Celsat America, Inc. ("Celsat"), by undersigned counsel, hereby submits the following reply to the comments submitted on the Petition for Expedited Rule Making to Establish Eligibility Requirements for the 2 GHz Mobile Satellite Service filed by ICO Services Limited on July 17, 1998 (the "Petition").¹ Celsat urges the Commission to implement ICO's proposal (with modifications described below) at the earliest possible time, rejecting the efforts of the MSS incumbents to thwart competition.

¹ The following parties submitted comments on the Petition: Celsat ("Celsat Comments"), Iridium, LLC ("Iridium Comments"), North American GSM Alliance LLC ("GSM Alliance Comments"), Constellation Communications, Inc. ("CCI Comments"), Mobile Communications Holdings, Inc. ("MCHI Comments"), TMI Communications and Company, Limited Partnership ("TMI Comments"), Globalstar, L.P. ("Globalstar Comments"), and ICO USA Service Group.

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I. THE STRIDENT OPPOSITION OF THE INCUMBENTS UNDERSCORES THE VALIDITY AND PUBLIC INTEREST BENEFITS OF ICO'S NEW ENTRANT PROPOSAL

As set forth in Celsat's Comments, ICO's Petition presented a well conceived plan for expediting competition in the MSS marketplace. While the details as to eligibility for conditional licensing must be worked out in the rulemaking proposed by ICO, Celsat supported the Petition as the best means of ensuring the development of competition to the MSS incumbents who have also filed applications for 2 GHz spectrum.²

If anything, the strident arguments of the incumbents confirm the wisdom of the approach which ICO advocates. Having procured MSS spectrum in the L-band, the MSS incumbents would now deny membership in their exclusive club to any would be competitors.

Thus, relying on orders of the International Bureau granting waivers of the financial qualifications requirements to two Big LEO applicants, Globalstar and Iridium contend that the Commission has already rejected ICO's proposal.³ In fact, the Bureau merely ruled that 2 GHz spectrum is available both for new service and for expansion by Big LEO systems.⁴ Nothing in the Bureau's waiver orders undermines ICO's proposal. Following the initial licensing round proposed by ICO, additional spectrum may become available for Big LEO expansion, if it in fact ever becomes necessary.

² See Celsat Comments at 2.

³ See Globalstar Comments at 2; Iridium Comments at 10-11. Ironically, Globalstar and Iridium have appealed to the full Commission the Bureau decisions upon which they rely. See Globalstar Comments at 3 n.2.

⁴ See Mobile Communications Holdings, Inc., 12 FCC Rcd 9663, 9673 (Int'l Bur. 1997); Constellation Communications, Inc., 12 FCC Rcd 9651 (Int'l Bur. 1997).

To the extent that additional MSS spectrum is now available in the 2 GHz band, however, the public interest requires that the Commission license it first to new entrants.⁵ None of the incumbents has suggested in this proceeding that it cannot operate successfully with the initial spectrum authorized by the Commission in the L-band. That being the case, it makes little sense to defer the licensing of new entrants like ICO and Celsat because of the possible expansion needs of their competitors.⁶

Indeed, none of the incumbents is currently providing service under its existing license. Iridium takes strong issue with ICO's suggestion that it would therefore be premature to grant any incumbent expansion spectrum, exclaiming that "[t]o date 74 Iridium satellites have been launched and the Iridium system is scheduled to commence operation in 27 days!"⁷ Press reports this week, however, indicate that Iridium has been forced to delay the start of its commercial service.⁸

⁵ As Globalstar recognizes, ICO's proposal operates as a temporary spectrum cap and, like the caps imposed in other services, would serve to ensure competitive parity in MSS. See Globalstar Comments at 3-4.

⁶ MCHI reads ICO's proposal as limited to proponents of global systems with the consequence that only ICO satisfies the proposed eligibility requirements. See MCHI Comments at 8 n.17. As discussed infra, ICO's proposal, however, would segment the 2 GHz band between global and non-global systems and Celsat would be eligible for the regional spectrum. See Petition at 8, Attachment A.2.

⁷ Iridium Comments at 10.

⁸ See Wall Street Journal, September 9, 1998 at A3. In this regard, see also Wall Street Journal, September 11, 1998 at A3 (describing how explosion of rocket carrying 12 Globalstar satellites on September 10, 1998 will delay commencement of commercial service of Globalstar).

In lieu of ICO's proposal, certain of the incumbents suggest that the Commission should initiate formal or informal negotiations among the 2 GHz applicants with respect to sharing of the band.⁹ In fact, the 2 GHz applicants have been unsuccessful in achieving consensus among (or indeed full participation by the applicants) on issues far less daunting than band sharing. By their conduct, the incumbents left no doubt that they are unalterably opposed to any speedy resolution of this proceeding.

Certain of the incumbents also complain that ICO seeks to gain a disproportionate share of the spectrum.¹⁰ As discussed infra, Celsat too has concerns as to ICO's band segmentation plan, but this and other issues as to eligibility for new entrant licensing can be resolved in the expedited rulemaking.¹¹ These incumbent complaints raise no question as to

⁹ See, e.g., Iridium Comments at 4-6; CCI Comments at 2-3; MCHI Comments at 7 n. 16 (negotiated rule making).

¹⁰ See Globalstar Comments at 4; Iridium Comments at 10-11.

¹¹ In particular, the Commission must address ICO's proposal to defer, in the case of mutual exclusivity, "the financial qualification requirement with the proviso that full disclosure of financial information must be submitted to the Commission within one year of the issuance of the conditional license." ICO Petition, Attachment A at 3 (proposed Section (d)(3)(iii)). While Celsat also commends ICO's proposal to defer financial showings (see Comments of the GSM Alliance at 2 n. 2), Celsat believes that no financial showing should be required at any time where there is no mutual exclusivity. To the extent that the Commission retains financial qualifications requirements, Celsat believes that the balance sheet test (requiring an applicant to demonstrate sufficient available current assets on hand to construct, launch and operate for one year) merely serves to stifle competition and disadvantage smaller competitors (e.g., MCHI and Constellation in the Big LEO proceeding). Any test should mirror marketplace realities and require no more than a demonstration that the applicant has a plan to raise debt and equity which has a reasonable likelihood of implementation. Applicants should be given broad latitude to make this demonstration.

the wisdom of proceeding promptly with ICO's proposal and Celsat urges the Commission to begin immediately these proceedings.

II. AS CELSAT HAS PROPOSED, THE COMMISSION SHOULD ALLOCATE THE REGIONAL-ONLY SPECTRUM EXCLUSIVELY FOR REGIONAL SYSTEMS

Celsat noted in its comments in this proceeding that it had concerns about ICO's proposed band segmentation plan but refrained from elaborating on the precise nature of its concerns because it believed that such issues could be addressed in the expedited rulemaking proceeding.¹² Given the apparently conflicting interpretations and uncertainties with regard to the precise nature of ICO's band segmentation proposal, however, Celsat finds it necessary to articulate more fully the nature of its concerns over ICO's band plan.¹³

In its Consolidated Response filed in connection with the proceedings initiated by the Commission's Public Notice of March 19, 1998, Celsat urged the Commission to assign to it the 2 GHz spectrum allocated solely for regional use.¹⁴ Celsat observed that authorizing its GSO system would put the regional spectrum to its earliest and best use (since the regional allocation is not useful to NGSO global systems).¹⁵

¹² See Celsat Comments at 2 n. 3.

¹³ See MCHI Comments at 8 n. 17; TMI Comments at 2-4.

¹⁴ Consolidated Response of Celsat America, Inc., filed June 18, 1998 at 7. ("Consolidated Response").

¹⁵ Because the uplink (15 MHz) and downlink (5 MHz) regional allocations are not equal, Celsat proposed that its downlink assignment should amount to 15 MHz and include 10 MHz of spectrum which is not regional-only. Given the disparate uplink and downlink regional allocations, it would be difficult for global systems to employ
(continued...)

In the Petition, ICO supported Celsat's proposal to the extent that it urged the Commission to license new entrants proposing regional GSO systems only in the portion of the 2 GHz band allocated to MSS in Region 2 and to license new entrants proposing NGSO systems only in the portion of the 2 GHz band allocated to MSS globally.¹⁶ ICO's proposed rules, however, allocate only 10 MHz of spectrum each for the up and down links, contrary to Celsat's proposal. Because of the unequal regional allocations with respect to the uplink and downlink, Celsat submits that ICO's proposal is unrealistic and that the Commission should allocate at least 15 MHz each to the up and down links for regional GSO systems.¹⁷

Moreover, as the GSM Alliance observes, ICO's proposed rules appear to require that any system licensed at 2015-2020 MHz (uplink) and 2170-2175 MHz (downlink) must be both GSO and NGSO.¹⁸ The Commission should eliminate the confusion engendered by what likely was a mere drafting oversight in the proposed rules and adopt the sensible approach outlined by Celsat in its Consolidated Response and which ICO's Petition, in principle, supports.

As Celsat noted in the Consolidated Response, its proposed approach puts the regional component of the 2 GHz allocation to optimal use at the earliest possible time,

¹⁵ (...continued)
the corresponding 15 MHz of the downlink.

¹⁶ Petition at 7-9

¹⁷ TMI goes further and urges that GSO MSS systems should have access to all of the allocated MSS spectrum. See Comments of TMI at 3.

¹⁸ See GSM Alliance Comments at 5 n. 7; Petition, Attachment A at 2 (proposed section (d)(2)).

enabling Celsat to bring its low cost (pennies per minute) service to subscribers in the near future.¹⁹ Accordingly, the Commission should proceed expeditiously with ICO's Petition and propose a band segmentation plan which reserves 15 MHz in the uplink and 15 MHz in the downlink for regional GSO systems of new entrants like Celsat.

CONCLUSION

As demonstrated by the foregoing and Celsat's Comments, ICO's Petition presents the Commission with a workable road map to implement competition in the MSS marketplace. Celsat urges the Commission to reject the delaying tactics of the incumbents and to issue promptly a notice of proposed rule making (with Celsat's suggested modifications).

Respectfully submitted,

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¹⁹ Consolidated Response at 8.

CERTIFICATE OF SERVICE

I, Carly B. Tolchin, hereby certify that on this 11th day of September, 1998, copies of the foregoing "Reply of Celsat America, Inc." were served by hand or U.S. mail, postage prepaid, as indicated on the following parties:

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